

Winchcombe Howard Packer, *Esquire*,  
*Nephew and Heir at Law of Frances*  
*St. John, late Viscountess Bolingbroke,*  
*deceased, who was one of the Daughters*  
*and Coheirs of Sir Henry Winchcombe,*  
*Baronet, deceased* - - - } Appellant.

William Lord Stawell, Mountague Vena-  
 bles, *Earl of Abingdon*, Samuel Lord  
 Masham, *Sir William Wyndham, Bart.*  
 Francis Annesley, *Esq;* and Henry St.  
 John, *late Viscount Bolingbroke* - } Respondents.

*Et E contra.*

*The CASE of the Respondents in the Original Appeal,*  
*and of the Appellants in the Cross Appeal.*

1699.  
Mar. 28, 29.

**S**IR Henry Winchcombe, by Lease and Release, conveyed his Estate in the County of Berks — To the Use of himself for Life, and afterwards — To Thomas then Earl of Berks, and others, for 200 Years, and subject to the said Term — As to Part of the said Estate, to the Use of his eldest Daughter Frances, and her Heirs — And as to other Part, to the Use of his second Daughter Elizabeth, and her Heirs — And the Residue to the Use of his third Daughter Mary, and her Heirs — And the Trust of the Term of 200 Years is declared to be, That out of that Part of the said Estate which was limited to the said Frances, the said Trustees should raise 4000*l.* for Henrietta (his Daughter by a second Wife) to be paid her at 21, or Marriage, and a Maintenance in the mean Time.

The said Frances was afterwards married to the Respondent St. John, and the said Mary to the Appellant's Father Robert Packer, Esq; — And after the Death of Sir Henry Winchcombe, a Partition of the said Estate, was, pursuant to a Decree in Chancery, made between the said three Sisters, by Lease and Release dated the 1st and 2d Days of March 1704. But the said Elizabeth soon after dying without Issue, whereby her Share came to her said two Sisters Frances and Mary, another Partition was made between the said two surviving Sisters and their Husbands, viz.

1701.  
Mar. 22, 23. By Lease and Release Tripartite, and Fine levied — The Manors of Bucklebury, Thacham, and Henwick, and the Rectories of Bucklebury and Thacham, with other Lands in Berkshire (Part of the Estate of the said Sir Henry Winchcombe) — were settled, subject to the yearly Rent-Charges therein mentioned, and to the Term of 200 Years, for raising the said 4000*l.* and Maintenance for the said Henrietta Winchcombe, and to a Term of 500 Years, to protect that Part of the Estate which was limited to Mrs. Packer, from the said 4000*l.* and Maintenance — To the Use of the Respondent St. John, for his Life, without Impeachment of Waste — And after, to the Use of such Persons, and for such Estates, Intents and Purposes, with or without Power of Revocation, as the said Frances St. John from time to time by any Writing under her Hand and Seal, executed in the Presence of three or more Witnesses, should appoint — and for want of such Appointment, to the Use of the said Frances St. John, and her Heirs.

Mar. 2. The said Frances St. John by her Deed Poll, executed in the Presence of three Witnesses, pursuant to the said Power, appointed the Premises — To the Use of the Respondent St.

*St. John*, for his Life, without Impeachment of Waste ——— Remainder to the Use of such Persons, and for such Estates, Intents and Purposes, with or without Power of Revocation, as he and she from time to time, by Writing under their Hands and Seals, testified by three Witnesses, should appoint ——— and for want of such Appointment, to the Use of the Survivor of them, and the Heirs of such Survivor.

1706.  
Feb. 27.

By Indenture, the Respondent *St. John*, and his Wife, demised the said Premises to his Grace the Duke of Chandos, and Lord Harcourt, for 99 Years, if the Respondent *St. John* should so long live; and after his Decease for 500 Years, to be void on Payment of 5500 *l.* and Interest to his Grace, and 1000 *l.* and Interest, to Lord Harcourt, on the 27th of August 1707.

Same Date.

By Indenture reciting the preceding Mortgage, and that it had been agreed, that if the said Frances would subject her Estate to the Payment of the said 5500 *l.* and 1000 *l.* the same should be applied towards Discharge of 11000 *l.* agreed to be paid by the Respondent *St. John* to Sir Thomas Dolman, for the Purchase of the Manor of Colthorpe in Berkshire, the Respondent *St. John* covenanted that he would purchase and convey the said Manor to the same Uses as are limited of the other Estate, by the Deed Poll of the 2d of March 1705.

1714.  
March 9.

By Articles of Agreement between the Respondent *St. John*, then Lord Bolingbroke, and the said Frances his Wife, of the one Part; and the Respondents the Lord Stawell and Sir William Wyndham, of the other Part, reciting all the preceding Deeds, and that the 5500 *l.* and 1000 *l.* were still due from the Respondent *St. John*; and that he was desirous to borrow 20000 *l.* more, and to raise Money for Payment of all his Debts, and for Security of the Monies so to be borrowed and raised, to assign all his Estates in Wilts, Surrey, Middlesex, and Berks; But that his Estates in Wilts, Surrey, and Middlesex, being either for Life only, and many of them in Remainder after his Father's Decease, or liable to be defeated by the arising of contingent Uses and Estates therein limited, and his Estates in Berks being certain only for Life, he could not make a satisfactory Security without the Concurrence of his Wife, who had consented not only to join in the Sale of an Estate in Essex, Part of her Jointure, without insisting on a Settlement of other Lands in lieu of it, but also to join with him in the Execution of any the Powers aforementioned, and in the Appointment of all or any Part of the Estates in Berkshire, to the Use of any Person or Persons who should advance or lend any Monies for any the Purposes aforesaid ——— He the Respondent *St. John* did covenant with Lord Stawell, and Sir William Wyndham, that he would in a Month, by Lease or otherwise, assign to them for the Term of 100 Years, or some other Term determinable on his Death, without Impeachment of Waste, all the Manors, Lands, Tenements, and Hereditaments, whereof he had any Estate in Possession or Remainder, in Wilts, Surrey, Middlesex, and Berks, subject nevertheless to such Securities as should be made for the said 20000 *l.* or for the Payment of his Debts ——— Upon Trust, that Lord Stawell, and Sir William Wyndham, during the Continuance of the Term so to be granted them, should receive the Rents and Profits remaining, after Satisfaction of the Money for which any such Mortgage should be made, with Interest, and Payment of his said Debts, and subject thereto, and should from time to time pay and dispose the same to the said Frances *St. John*, or such Person as she by Writing under her Hand, or otherwise, should direct, for her sole and separate Use, during so many Years of the said Term as she should live, and the same not to be liable to any subsequent Debts or Controul of her Husband ——— And after her Decease, to such Persons as she, whether Covert or Sole, by any Writing under her Hand and Seal, attested by three or more Witnesses, should appoint, and for want of such Appointment, to her Executors or Administrators ——— And the Respondent *St. John* further covenanted, that he would join with his Wife in the Execution of any Deeds for settling and appointing all the Estate in Berks, after the Determination of the said Term of Years to be made to the Lord Stawell, and Sir William Wyndham; and of the Estates that shall have been made by way of Security for any the Purposes aforesaid ——— To the Use of such Persons as the said Frances *St. John* alone, whether Covert or Sole, by any Writing under her Hand and Seal, attested by three Witnesses, should appoint ——— and for want of such Appointment, to the Use of her and her Heirs.

1714.  
March 10.

By Indenture reciting the beforementioned Deeds, the Respondent *St. John*, for Security of the former 6500 *l.* and the further principal Sum of 20000 *l.* and Interest, demised to the Duke of Chandos (then Earl of Carnarvon) all the Manors, Lands, Tenements, and Hereditaments, wherein he had any Estate in Possession or Remainder, in Wilts, Surrey, Middlesex, and Berks, for the Term of 100 Years, if he should so long live ——— And he and the said Frances his Wife, appointed the Premises in Berks, to the Use of the Duke for 600 Years from the Death of the Respondent *St. John*, subject to a Proviso to be void on Payment of 26500 *l.* and Interest ——— And after the Determination of the said Term of 600 Years, to the Use of such Persons, and for such Estates as the said Lady Bolingbroke, by Writing under her Hand and Seal, attested by three Witnesses, should appoint ——— And for want of such Appointment, to the Use of her and her Heirs.

By



1714.  
March 11.

By Indenture reciting the said Articles of the 9th of *March*, and that the Lady *Bolingbroke* had joined in the Sale of her said Jointure Lands in *Essex*; and in Execution of the Powers in the Articles mentioned for securing the Sum of 20000 *l.* — The Respondent *St. John*, in Performance of the said Articles on his Part, and to raise Money for Payment of his Debts, and to make Provision for the Maintenance of the said Lady *Bolingbroke* — Demised all the said Manors, Lands, &c. in *Wilts, Surrey, Middlesex, and Berks*, to the Lord *Stawell* and Sir *William Wyndham* for 150 Years, if he should so long live, without Impeachment of Waste — Upon Trust, by and out of the Rents, Issues and Profits, after Satisfaction of 20000 *l.* and Interest, secured by a Mortgage of the same Premises, and by Sale of any Woods, Underwoods, and Timber, and by Leases for any lesser Number of Years, and by granting Copyhold Estates, or other customary Estates, or by all or any of the Ways and Means aforesaid, to raise Monies to satisfy the Debts in a Schedule annexed, and to dispose the Residue of the Rents, Issues, and Profits, and of the Monies that shall be raised by all or any the Ways and Means aforesaid, to the said Lady *Bolingbroke*, or to such Persons, and in such manner as she from time to time should direct, during so many Years of the said Term as she should live, for her sole and separate Use — And after her Decease, to such Persons as she, whether Covert or Sole, by Writing under her Hand and Seal, attested by three or more Witnesses, should appoint — and for want of such Appointment, to her Executors and Administrators.

Georgii.

By an Act of Parliament, the said Respondent, then Lord *Bolingbroke*, was attainted of High Treason from the 24th Day of *June* 1715, and all his Estate became thereby forfeited.

Georgii.

And by another Act in the same Year, for appointing Commissioners to inquire of the Estates of certain Traitors, &c. — All the Estates Real and Personal, whereof any Person who since the 24th Day of *June* 1715 had been, or before the 24th Day of *June* 1718, should be attainted for High Treason committed before the 1st Day of *June* 1716, was or should have been possessed of, or intitled to, on the 24th Day of *June* 1715 or afterwards, were vested in His Majesty for the Use of the Publick: — And it was thereby Enacted, That all Persons having any Estate, Right, Title, Interest, Use, Trust, Charge or Incumbrance in Law or Equity, into, out of, or upon any real or personal Estate thereby vested in His Majesty, should, on or before the 24th Day of *June* 1717 (which Time, by an Act 3<sup>o</sup> *Georgii*, was enlarged to the 1st Day of *February* 1717) enter their Claims before Four or more of the Commissioners in the said Act named, in the Manner therein mentioned, or in Default, every such Estate, Right, Title, &c. should be null and void, and the Premises charged therewith, be discharged from the same.

Georgii.

By an Act of Parliament for vesting the forfeited Estates in Trustees, &c. — All the Estates by the former Act vested in His Majesty, were vested in Commissioners or Trustees therein named, and their Heirs, Executors, &c. from the 25th Day of *March* 1718 — And it was thereby Enacted, “That every Party Claimant, should, if required by the said Commissioners upon Oath, answer to the Truth of their Claim, and to such Interrogatories as they should think fitting for clearing thereof, and produce all Deeds, Writings and Evidences any ways concerning the same, which Oath the said Commissioners were to Administer — And that any Four or more of the said Commissioners, should be a Court of Record, and that every Judgment, Determination, or Decree which they should make, should be entered of Record in Books of Parchment, and that they should be final and decisive, and binding unto all Parties concerned, their Heirs and Successors, Executors, &c. and all Persons claiming under them, except the Parties Claimants, should enter their Appeal against the same in Twenty Days, in the Manner therein directed.” — And by this Act, the Time for entering Claims was enlarged to the 1st Day of *June* 1718.

June 22.

Lord *Stawell* and Sir *William Wyndham* entered their Claim before the said Commissioners, on behalf of the said *Frances St. John*, thereby setting forth (*inter alia*) the said Indentures and Deed Poll, dated the 22d and 23d Days of *January*, and the 2d Day of *March* 1705, and the 9th and 11th Days of *March* 1714; and thereby claimed the said Premises demised to them for the Residue of the said Term of 150 Years then to come.

July 10.

By Deed Poll, the said *Frances St. John*, by Virtue of the Powers then in her, directed and appointed Lord *Stawell* and Sir *William Wyndham*, and the Survivor, &c. to pay and apply the said Residue (remaining after Satisfaction of the said Mortgage and Debts) of the Rents, Issues and Profits of the said Premises, limited to them for 150 Years, subject to any Power in her, to limit any Trusts or Uses thereof — from and after her Decease, to the Respondents the Earl of *Abingdon*, Lord *Lansdown*, Lord *Masham* and *Francis Annesley*, Esq; for the Residue of the said Term — And from and after the Decease of her and the Respondent *St. John*, she directed and appointed, that all the said Premises should stand and be limited, after the Determination of the said 150 Years, and after her Decease —

To

To the Use of the Heirs of her Body ; ——— Remainder to the Appellant Mr. Packer in Tail, ——— Remainder to her own Right Heirs.

17 Sept. 1718.

5<sup>th</sup> Georgii

*Lady Botolph died without issue*

An Act of Parliament was passed, to enable Robert Packer, Esq; and his Wife, and the Appellant their Son (then a Minor) to enter their Claims before the said Commissioners, and to empower the said Commissioners to determine the same ; — In which Act the former Settlements of the Estates in *Berkshire*, and the said Deed Poll, dated the 10th Day of July 1717, and the several Acts of Parliament herein before-mentioned are recited ; — And 'tis thereby also recited, " That Claims had been entered pursuant to the said Act 1<sup>o</sup> Georgii for the said Mortgages and Debts, and Term of 150 Years ; but that no Claim had been enter'd by the said Frances St. John or her Trustees, for the Inheritance of the said Premises, and that the Persons claiming by Disposition from the said Frances, had had no Opportunity to claim their respective Interests ; — Therefore, at the Suit of the said Robert Packer and his Wife, and the Appellant their Son" — It was Enacted, That it should be lawful for them and their Trustees, or any Person claiming any Estate, Right or Interest under the said Frances (not being a forfeiting Person) to enter their Claims for any Estate or Interest which they had, or might have to any Lands which were vested in the said Frances St. John before the 24th Day of June 1715 : " And that the Commissioners should have Power to Determine the same, whose Decree should be final, except the Party Claimant should, in 20 Days, Appeal against the same, in such Manner as by the said former Act, or by any other Act, was or should be directed : " — And it was further Enacted, That it should be lawful for the said Commissioners, either to issue Debentures or Certificates to Claimants, for any Sum which had been or should be determined to be due on any Claim, or to decree Possession to the Claimant, according to such Estate as should be allowed, and to cause Possession to be deliver'd accordingly ; " or to cause such Part of the Premises, subject to the Payment of any Sum (as they should think fit) To be Sold, for Satisfaction thereof, and the Residue remaining unfold, to Assign or Convey to the Persons intitled thereto, according to their Estates or Interest therein, such Debentures or Certificates to be issued and paid, and such Possession to be delivered, and such Sale, Assignment or Conveyance to be made according to the Directions given, or to be given by the said Act 4<sup>o</sup> Georgii, or by any other Act made, or to be made in that Behalf."

1719 June 23. Pursuant to the said Act 5<sup>o</sup> Georgii, the Respondents the Earl of Abingdon, Lord Lansdown, Lord Masham and Francis Annesley, made their Claims before the said Commissioners, thereby setting forth (*inter alia*) the said Indentures and Deed Poll, dated the 22d and 23d Days of January, and 2d Day of March 1705, the 11th Day of March 1714, and the 10th Day of July 1717, and that by Virtue of the said Deeds, and other Assurances therein mentioned, they did claim the Premises demised to Lord Stawell and Sir William Wyndham as aforesaid, for the Residue of the said Term of 150 Years then to come, and all Advantage accruing to them by the Deeds aforesaid.

Same Day. Pursuant to the said last Act, the Appellant, by Robert Packer his Father, Guardian and Prochein Amy, and the said Robert Packer and his Wife, made their Claims before the said Commissioners, of such Estate, Right, Title and Interest in Law or Equity, as they had or claimed to any of the Premises, late of the Respondent St. John, thereby (*inter alia*) setting forth the said Indentures and Deed Poll, dated the 22d and 23d Days of January, and the 2d Day of March 1705, the 10th and 11th Days of March 1714, and the 10th Day of July 1717. and also setting forth, that the Appellant, by virtue of the Conveyances before-mentioned, did claim the Premises in Berkshire, to him and the Heirs of his Body, subject and charged as aforesaid ; — And the said Mary Packer, if the said Appellant her Son should die without Issue of his Body, claimed the said Premises in Berkshire to her and her Heirs, as her Right and Inheritance.

1719 July 3. The said Appellant Mr. Packer's said Claim coming to be heard before Five of the said Commissioners in open Court, upon producing, proving and reading the said Indentures of Lease and Release, herein before-mentioned, and several other Deeds in the said Claim mentioned, it was adjudged, determined and decreed by the said Commissioners, that the said Appellant's Claim of the Premises in Berkshire, to him and the Heirs of his Body, subject and charged as aforesaid ; — And that the Claim of the said Mary Packer for the Premises in Berkshire, to her and her Heirs, in case the said Appellant her Son should die without Issue, should be and were thereby allow'd.

1719 Nov. 26. The Claim of the Respondents Lord Stawell and Sir William Wyndham, came to be heard before Five of the said Commissioners, and upon producing, proving and reading the several Indentures of Lease and Release, and Deed Poll before-mentioned, and several other Deeds in the said Claim mentioned, " It was adjudged, determined and decreed by the said Five Commissioners, that the said Claim of and for the Premises to them demised as aforesaid, for the Residue of the said 150 Years then to come, determinable as aforesaid, upon the Trusts in the said Indenture of the 11th of March 1714 thereof declared, " should

" should be and the same *was thereby allowed.*" — And the said Commissioners order'd, That it should be referred to the Master of the References, to examine what remained due on account of the Schedule Debts, and to report to the Court.

1719 Nov. 26. The said Claim of the Respondents Lord *Abingdon*, &c. came to be heard before Five of the said Commissioners, and upon producing, proving and reading the said Indentures of Lease and Release, and other Deeds in the Claim mentioned; "*It was adjudged,*" determined and decreed by the said Commissioners, that the said Claim for the said Premises so demised to Lord *Starwell* and Sir *William Wyndham*, for the Residue of the said 150 Years, determinable as aforesaid, and for all Benefit accruing to them by the Deeds aforesaid, should be and was thereby allowed."

1725 July 13. By Indentures Tripartite, between *George Gregory*, Esq; Sir *Thomas Hales*, Bart. *Henry Cunningham*, *Demis Bond*, Esqrs; *John Birch* Serjeant at Law, and Sir *John Eyles*, Bart. Commissioners, appointed for putting in Execution the Powers relating to the forfeited Estates, &c. of the first Part — The Respondents Lord *Starwell* and Sir *William Wyndham* of the second Part — And the Earl of *Abingdon*, Lord *Lansdown*, Lord *Masbam* and *Francis Annesley*, Esq; of the third Part — reciting (*inter alia*) the said several Claims of the said Respondents, and that the said Commissioners for clearing the Debts of the Respondent *St. John* affecting the Premises claimed, had sold the Manors or Lordships of *Thacham* and *Henwick*, and *Colthrope*, *cum pertinen'* in *Berkshire*, and the Rectory impropriate of *Thacham* and *Henwick*, with the Appurtenants — And also reciting, that for the Purposes aforesaid, the said Commissioners had sold or contracted to sell, the Rectory of *Bucklebury*, *cum pertinen'*, in *Berkshire* — It is witnessed, that in pursuance of the Powers in the before-mentioned Acts of Parliament, they the said Commissioners did bargain, sell, assign and set over, unto the said Respondents Lord *Starwell* and Sir *William Wyndham*, their Executors, &c. — All the Premises comprized in the said Term of 150 Years, with the Appurtenances — And the Manor of *Bucklebury*, with the Appurtenances in *Berkshire*, and all other Premises comprized in the said Term, not by them sold or contracted to be sold, as aforesaid; — To hold for the Residue of the said Term of 150 Years then to come, determinable on the Death of the Respondent *St. John*, as aforesaid; — In Trust, for Lord *Abingdon*, Lord *Lansdown*, Lord *Masbam* and *Francis Annesley*, their Executors, &c. subject to the Payment, in the first Place, of the Debts mentioned in the Schedule annexed to the Indenture, dated the 11th Day of *March* 1714, which were not, or should not be satisfied out of the Rents and Profits of the Estate, late of the Respondent *St. John*, subject to the Payment thereof, or by the Monies raised by the Sale of such Part thereof, as had been sold towards Satisfaction thereof, or by Certificates or Debentures issued, or to be issued by the said Commissioners for that Purpose.

11<sup>o</sup> Georgii. By an Act of Parliament — reciting in Part, the said Acts 1<sup>o</sup> & 4<sup>o</sup> *Georgii*, and an Act 9<sup>o</sup> *Georgii*, whereby the forfeited Estates remaining unsold, were divested out of the said Commissioners, and vested in his Majesty, for the Use of the Publick; — And that the Respondent *St. John* had made his Submission to His Majesty, which His Majesty had been pleased to accept; — It was Enacted, That the Respondent *St. John*, his Heirs, Executors, &c. should be enabled to have, hold and enjoy, all such real Estate as he should thereafter acquire, and all such personal Estate as he then was, or thereafter should be intitled to, as if no such Attainder had ever been — "*Provided that all Adjudications, Sales and Conveyances, made by the said Commissioners, touching any Estate or Interest in Law or Equity, into, or out of any Estate of the Respondent St. John, or of the said Frances his late Wife, or of any Person in Trust for them or either of them, should be, and they were thereby Ratified and Confirmed, and should be deemed good to all Intents, against the said Respondent St. John, and the said Frances, or any claiming under them*" — The Respondent *St. John* complied with the Terms of the said Act, and is intitled to the Benefit thereof.

1725 Aug. 26 By Indenture, the Respondents the Earl of *Abingdon*, Lord *Masbam*, *Francis Annesley*, and Lord *Lansdown*, for the Considerations therein mentioned; did assign to the Respondent *St. John*, his Executors, &c. all their Estate and Interest in Law and Equity to the said Premises comprized in the said Term of 150 Years, with the Appurtenances; — and did thereby agree, That the Respondents Lord *Starwell* and Sir *William Wyndham*, should stand and be possessed of the said Premises, for the Residue of the said Term, in Trust, for the Respondent *St. John*, and his Assigns: — And did appoint the Respondents Lord *Starwell* and Sir *William Wyndham*, to pay the Rents and Profits of the said Premises to the said Respondent *St. John* and his Assigns, for the Residue of the said Term.

1725-26 January 1. The Appellant *Packer* exhibited his Bill in the High Court of *Chancery*, against all the Respondents and others, thereby reciting several of the Deeds and Acts of Parliament before-mentioned, and suggesting that the 26,500 *l.* charged upon the Estates of the said *Frances St. John* and her Husband, jointly, being borrowed for his Use; his Estate ought first to have been sold, and apply'd to the Payment of the said Mortgage Debts, so far as it would extend,

extend, and no more of her Inheritance ought to have been sold, than what was necessary for making up the Deficiency; — yet, that the Commissioners had sold the Manors of *Thacham* and *Henwick*, which were part of her Inheritance, for Payment of the said Debts, and sold no Part of her Husband's Estate, except the Manor of *Coltbrope*; — And that therefore the Appellant ought to have a Recompence out of the Respondent *St. John's* Estate for Life, in respect of the Inheritance of her Estate so sold; — Or at most, that her Estates ought only to pay a proportionable Part of the said Debts with his Estates, which ought to be sold for that Purpose, or the Terms which were Mortgaged to the Duke of *Chandos*, ought to be assigned to the Appellant, that he may receive a Satisfaction — That the Respondents having been in Possession of the Lands more than Four Years, they have, or might have paid off all the Debts, and the Trust of the said Term of 150 Years being performed, it ought to be assigned over, to protect the Inheritance, and the Appellant ought to be put into Possession of the Estates — And that the Rents and Profits thereof, were not directed to be paid to Lord *Abingdon*, Lord *Lansdown*, Lord *Masbam* and *Francis Annesley*, for their own Use; but upon some private Trust — And that they who have received the Rents and Profits, ought to account for the same — That the Respondents have sold and cut down a great Number of Timber-Trees upon the said Estates, and some that were not only an Ornament, but useful Shelter to the Mansion-House, and threaten to cut down more; — But that the Debts and Incumbrances being all paid off, the Respondents ought not to sell any Timber, or commit any Waste — And praying the Respondents may answer the Premises, and set forth who have been in Possession of the said Estates which remain unsold, and what the yearly Rents and Profits thereof have amounted to, and who hath received the same, and for whose Use and Benefit, and that the said Mortgaged Terms, may be Assigned, and the Respondents be restrained from committing farther Waste, and from removing or disposing of the Trees already cut down, and may Account to the Appellant for such as they have already disposed of — And to be relieved.

The Respondents Plea

To which Bill the Respondents put in their Plea and Answer — And as to so much and such Part of the said Bill as seeks to compel the Respondents to account for the Rents and Profits, or the Money raised out of, or by the Premises comprized in the Term of 150 Years in the Bill mentioned, or any of them; Or to discover what the yearly Rents and Profits thereof have amounted unto, and who hath received the same; Or which seeks to discover, whether the Appointment in the Bill mentioned to be made by *Frances* late Viscountess *Bolingbroke*, to the Respondents the Earl of *Abingdon*, Lord *Masbam*, Lord *Lansdown*, and *Francis Annesley*, was for their own Use, or upon any Trust; Or which seeks to impeach the Title of the Respondents, or of any of them, to the said Term of 150 Years, or to make the same liable to make the Appellant any Recompence or Satisfaction for the Inheritance of the other Estates late of the said *Frances* late Viscountess *Bolingbroke*, which have been sold by the Commissioners in the said Bill mentioned, for the Payment of the Debts of the Respondent *St. John*; Or which seeks to have an Assignment of the said Term, or of any other satisfied Incumbrance, precedent to the said Term of 150 Years, in order to prevent the Respondents from having the full Benefit of the Residue of the said Term of 150 Years; Or which seeks to impeach or call in Question what the said Commissioners in the Bill mentioned, appointed by the several Acts of Parliament in the Bill and in the Plea mentioned have done, under the Authority, and by Virtue of the said Acts of Parliament, or any of them; Or which seeks to restrain the Respondents from having and using the proper Privileges of Tenants for Years, without Impeachment of Waste. The Respondents pleaded — and for, and by way of Plea, set forth the several Deeds, Acts of Parliament, Claims, and Decrees of the Commissioners aforementioned — And that the said several Decrees of the Commissioners were never appealed against, and are therefore final and decisive, and binding to all Parties, and all Persons claiming under them, and especially since the Appellant did not Claim before the said Commissioners any Interest in the said Term of 150 Years, or any other Term; but on the contrary, it appears by the said Claim, and the Commissioners Decree thereupon, that the Appellant claimed only an Estate Tail in the Premises in Berkshire, which were formerly the Inheritance of the said *Frances St. John*, and even subject to the said Term of 150 Years, and other Terms in the Claim mentioned — All which the Respondents pleaded in Bar to so much of the Bill as aforesaid — And not waving their said Plea, but for corroborating the same, they answered the Residue of the Bill not pleaded to.

1726 Apr. 29.  
Order on arguing the Plea,

This Plea coming to be argued before the Right Honourable the Lord High-Chancellor of Great-Britain, his Lordship was pleased to make the following Order, viz. — It is ordered, That the said Plea do stand for an Answer, without Liberty for the Plaintiff to except thereto, and that the Benefit thereof be saved to the said Defendants at the Hearing of this Cause: And it being insisted by the said Plea, that the Plaintiff is only entitled to the Reversion of the Premises in Question, after the Death of the late Lord *Bolingbroke*: And it being likewise insisted by the said Plea, that the said late Lord *Bolingbroke* is Tenant of the said Premises for a Term of Years determinable upon his Death, without Impeachment of Waste: In the mean time it is thereupon further ordered, That the Defendants be at liberty to carry off such Timber as is now cut down upon the Premises in Question; and that

that the Injunction in this Cause to stay the Defendants cutting down any more Timber growing upon the said Premises be dissolved, except as to the cutting any Timber that is Ornamental, or a Shelter to the Mansion House, as to which the said Injunction is hereby continued.

The said Appellant Mr. *Packer* has appealed from the said Order, and prays that the said Plea may be over-ruled.

The Respondents to that Appeal being advised, that the Appellant Mr. *Packer* had no Reason to complain of the said Order, but that they were aggrieved thereby, and the said Plea ought to have been allowed — Therefore they have also appealed from the said Order of the 29th Day of *April* 1726.

And in Regard that the Claim of the Respondents the Earl of *Abingdon*, &c. of the said Term of 150 Years, without Impeachment of Waste, has been examined and allowed by the said Commissioners, pursuant to the Directions of the said several Acts of Parliament :

That the Appellant Mr. *Packer*, pursuant to an Act of Parliament made in his Favour for that particular Purpose, claimed the Inheritance of the Premises, no other ways than as subject to the said Term, which was accordingly allowed :

That the said Appellant by his said Bill, seeks to set aside or invalidate the Determinations of the said Commissioners, which by the said several Acts of Parliament, are made final and conclusive :

And that many dangerous Consequences must inevitably happen to the Properties of great Numbers of those who claim, or have purchased Estates under the Determinations of the said Commissioners, if such Determinations should be broke into or shaken :

*THE Respondents the Earl of Abingdon, &c. for these Reasons (among others) humbly hope, that their said Plea shall be absolutely allowed — And that the Appeal of Mr. Packer shall be Dismissed with Costs.*

P. Y O R K E.

T H O. L U T W Y C H E.

Winchcombe Howard } Appellant.  
Packer, Esq; - }

The Right Hon. the }  
Lord Sawell and } Respondents.  
others - - }

*Et è Contra.*

The Respondents CASE.

To be Heard at the Bar of the House of  
LORDS, on  
of March 1728.

*Pathe } Original & Legals  
J. M. } Dismissed his Order -  
Complained of Affirmation.*



